No. 10342

In the United States Circuit Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

POLSON LOGGING COMPANY, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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JURISDICTION

This proceeding is before the Court on petition of the National Labor Relations Board for enforcement of its order against respondent, issued pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. 1940 ed., Sec. 151, *et seq.*).[1] The Board's decision and order are reported in 40 N. L. R. B. 736, and are set forth at pages 44 to 79 of the printed record. This Court has jurisdiction of the proceeding under Section 10 (e) of the Act, since

[1] The pertinent provisions of the Act are printed in the Appendix, *infra*, p. 20.

respondent has its principal office at Hoquiam, in the State of Washington, and the unfair labor practices occurred within this judicial circuit at respondent's enterprise near Hoquiam.

STATEMENT OF THE CASE

Upon charges filed by the Brotherhood of Railroad Trainmen, herein called the Trainmen, and upon the usual proceedings under Section 10 of the Act, fully set forth in the Board's decision (R. 44–47), the Board, on April 20, 1942, issued its findings of fact, conclusions of law, and order which, briefly summarized, are as follows:

1. *The nature of respondent's business.*—Respondent, a Washington corporation, is engaged near Hoquiam, Washington, in extensive logging and sawmill operations; as part of its logging operations respondent operates a railroad for the transportation of logs from the woods to tidewater. Respondent employs about 500 men in its logging operations, of whom 33 are railroad workers (Bd. Exh. 2, R. 83–85). No question of jurisdiction is presented (Bd. Exh. 2, R. 85).

2. *The unfair labor practices.*—In violation of Section 8 (1) of the Act respondent interfered with, restrained, and coerced its railroad workers by warning that it might abandon its logging railroad, or transfer the operation of that railroad to a common carrier because of an attempt by the Brotherhoods [2] to organize

[2] We use the term "Brotherhoods" to refer collectively to the Trainmen and the Brotherhood of Locomotive Firemen and Enginemen, which, together with the Trainmen, sought to organize respondent's railroad workers in the spring of 1940, *infra*, p. 5. We sometimes refer to the latter union as the Firemen.

these workers; by interrogating some of them concerning their membership in the Brotherhoods; and by making derogatory remarks about, and threatening to discharge, an employee whom it suspected of being the instigator of the Brotherhoods' membership campaign (R. 50–54). Respondent violated Section 8 (1) and (3) of the Act by discharging and refusing to reinstate Dave Lytle and Clayton Reece, two of the leaders in the Brotherhoods, because of their union membership and activity (R. 54–70).

3. *The Board's order.*—The Board ordered respondent to cease and desist from its unfair labor practices, to reinstate Lytle and Reece with back pay, and to post appropriate notices (R. 73–75).

SUMMARY OF ARGUMENT

I. The Board's findings of fact with respect to the unfair labor practices are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act.

II. The Board's order is valid.

ARGUMENT

Point I

The Board's findings of fact with respect to the unfair labor practices are supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) and (3) of the Act

A. The motive which impelled respondent to commit the unfair labor practices here involved

In 1935, many of respondent's employees joined the United Brotherhood of Carpenters and Joiners of America, an affiliate of the American Federation of Labor (R. 122–123, 165, 317–318). A prolonged strike affecting the lumber industry of the Northwest was waged by the Carpenters in 1935 to secure recognition and obtain higher wages and better working conditions for the lumber workers.[3] Another protracted strike occurred in 1936, which was settled in 1937; both strikes seriously affected respondent's operations (R. 118–122, Bd. Exhs. 7, 8, R. 191–194). In 1937 respondent's employees concertedly changed their affiliation to the Congress of Industrial Organizations, by becoming members of International Woodworkers of America, herein called the Woodworkers.[4] Since then respondent has dealt with the Woodworkers as sole

[3] A brief account of this strike is contained in Vol. 41, No. 3, pp. 656–659 of the Monthly Labor Review (September 1935), a publication of the United States Department of Labor.

[4] This shift in affiliation was an episode in an industry-wide fight between the Carpenters and the Woodworkers. For a succinct account of the conflict, see *How Collective Bargaining Works*, a publication of the Twentieth Century Fund: New York: American Book-Stratford Press, Inc., 1942: pp. 925–926.

bargaining agent for all of its woods employees, including the railroad workers. (R. 122–128, 316–318).

In the early part of 1940 some of respondent's railway employees became dissatisfied with representation by the Woodworkers, and asked the Brotherhoods to represent them. On receiving this request, the Brotherhoods launched an organizational campaign among respondent's railroad workers (*infra,* p. 8). The unfair labor practices in which respondent engaged were committed to counteract that campaign, because respondent feared that its success would result in a jurisdictional fight between the C. I. O. and the Brotherhoods that would seriously harm its business.

B. Interference, restraint, and coercion in violation of Section 8 (1) of the Act

Bennett Ellingson, respondent's assistant superintendent, in general charge of its railroad operations (R. 355, 368), was the spearhead of respondent's opposition to the Brotherhoods' campaign. In April 1940, when, the Brotherhoods' campaign was well under way, Ellingson approached a locomotive engineer named Wood, ostensibly to ask Wood whether his engine needed repairs (R. 179–181). After Wood replied that the engine was "working pretty good," Ellingson said: "We were figuring on putting this engine in the shop and getting it overhauled; and there is a lot of repair work to be done on other engines" R. (180–181). "But," Ellingson continued, "this Brotherhood trouble has come up, and I don't know how much trouble we are going to have, and it has knocked it all in the head. If there is going to be

a lot of trouble, it is going to be shut down" (*ibid.*). Wood observed at this point that he "didn't see why there should be any trouble," since, he said, "the men [did not] want any" (*ibid.*). Disregarding Wood's remark, Ellingson declared that Wood's fellow employee, C. B. Groves, who had been a member of the Trainmen for many years (R. 216–217), was the "trouble maker" responsible for the Brotherhoods' drive (R. 180–181).

Ellingson, in talking to another employee, named Harlan, again voiced his suspicion that Groves was the instigator of the Brotherhoods' campaign and told Harlan that Groves was "leading [the men] astray" (R. 260–261); a few days later Ellingson followed up that remark by telling Harlan "that the Northern Pacific was going to take it [i. e., respondent's railroad] over" (R. 262–263). Ellingson spread the same rumor to other employees. After questioning several of the railway workers as to whether they had joined the Brotherhoods, Ellingson countered their affirmative reply by asking them what they would do if the Northern Pacific Railway took over respondent's railroad (R. 310–312, 153–154). Ellingson remarked in the hearing of another employee that "some day" the men would "all be going down the road," because of "bucking" between the "two unions down there" (R. 265–271).

These coercive tactics were buttressed by a blunt threat to discharge Groves. That threat was made by Vic Lehman, Groves' foreman, who was at that time in charge of Camp 6 (R. 216–217, 88–89). In the guise of friendly advice, Lehman warned Groves that he "had

better be careful [of] what [he said] about the Brotherhood" because "somebody [was] going to be let out, and it might be [Groves]" (R. 217–218).

This was, indeed, no idle threat, for, as we later point out, *infra,* pp. 7–17, respondent discharged two Brotherhood leaders soon after it learned of their prominence in those unions.

The evidence just reviewed is more than adequate to support the Board's conclusion that respondent violated Section 8 (1) of the Act. *H. J. Heinz Co.* v. *N. L. R. B.,* 311 U. S. 514, 518; *N. L. R. B.* v. *Schaefer-Hitchcock Co.,* 131 F. (2d) 1004, 1007–1008 (C. C. A. 9); *N. L. R. B.* v. *Pacific Gas & Electric Co.,* 118 F. (2d) 780, 787–788 (C. C. A. 9).

C. The discrimination against Lytle and Reece in violation of Section 8 (1) and (3) of the Act

Respondent discharged Lytle and Reece assertedly because of their failure on one occasion to observe a safety regulation (R. 11, 117–118). The Board found, however (R. 55–70), that the real motive for their discharge was resentment of their leadership in the Brotherhoods. The evidence warrants that finding.

Both men were employees of long standing. Dave Lytle began to work for respondent in 1934; after being 3 weeks in its employ he was promoted to the position of head brakeman (R. 135–136). On two occasions he voluntarily left its employ, but on each occasion he was persuaded by respondent's supervisors to return to work after a brief absence (R. 136–137). He continued in respondent's employ thereafter until his discharge on May 21, 1940 (*ibid.*). Clayton Reece, a brakeman,

was first employed by respondent in 1928; 2 years later he was injured, and a prolonged absence from work followed (R. 286). Reece did not resume his employment with respondent, except for a short period in 1933, until May 1939, but from then on he remained in its employ until his discharge on May 21, 1940 (R. 286–287).

Both Lytle and Reece played a leading role in the Brotherhoods. When, as has been noted, respondent's workers became dissatisfied with the Woodworkers, they turned to Lytle for leadership in changing their union affiliation (R. 138–139). At the request of Lytle the Brotherhoods undertook to organize respondent's railway employees (R. 139–140). While the membership campaign was in progress, Lytle devoted a good deal of his spare time to organizing in behalf of the Brotherhoods (*ibid*). He became the chairman of the executive committee of the Trainmen (R. 156). Thereafter, when that union and the Firemen appointed a joint bargaining committee, Lytle was a member of that committee and acted as its spokesman (R. 91, Bd. Exh. 4, R. 95, 142, 156, 326). Reece was also an outstanding adherent of the Brotherhoods. He was the secretary of the Trainmen's executive committee, and an associate of Lytle on the joint bargaining committee (R. 91, 155–156).

The prominent role of Lytle and Reece in the Brotherhoods came sharply to the notice of respondent's officials in May 1940. The Brotherhoods had succeeded by this time in enrolling almost all of respondent's railway employees as members (R. 166–167). On be-

half of the joint committee, Lytle arranged for a conference with the management, which was held on May 18 (R. 141–142, 325). As the spokesman for the joint committee, Lytle presented F. Arnold Polson, respondent's general manager, with a written request for recognition by the Brotherhoods and a contract proposal (Bd. Exh. 4, R. 95–108, 89–92, 141–142, 296, 326).[5] Manager Polson informed the committee that, in view of the exclusive recognition which had been granted the Woodworkers, he desired to consult respondent's attorney before giving consideration to the Brotherhoods' request (R. 142, 326). Polson made it very clear, however, that he opposed the change in union affiliation that had occurred. He told the committee he was not "running a railroad but a logging business," and that "one union in the business [would be] better than two" because, he said, "jurisdictional disputes were likely to arise" in the case of two unions (R. 142–143, 255–257, 267–268, 284–285, 289–290). Polson went on to express surprise, moreover, that men who had served on committees of the Woodworkers should appear before him on behalf of rival unions, adding that they were "making a mistake" (R. 142–144, 256–257, 289–290, 326–328, 357–359, 377–378).

The incident which assertedly led to the discharge of Lytle and Reece occurred on May 21, 1940—3 days after the conference just mentioned. At the end of

[5] Two officials, besides F. Arnold Polson, were present at this conference: A. N. Polson, the superintendent, and Bennett Ellingson, the assistant superintendent (R. 91, 357, 376).

their workday on May 20, Lytle and Reece noted that they had been assigned as the braking crew of a train which was to leave respondent's camp at 5 a. m. the next morning (R. 146, 290–291).[6] The train to which they were assigned was made up of a string of empty cars, coupled to the front of the engine, and a flatcar known as the "crummy," which was coupled to the rear of the engine; the make-up of the train was such, therefore, that the "crummy" would be pushed ahead of the engine (R. 239, 291). The "crummy" has a shanty at one end called the "dog house," which has three windows: one in front and one on each side; the latter are set in sliding panels, and may easily be opened or closed (R. 156–158, 259–260).

Before proceeding with a recital of the incident that assertedly led to the discharge of these employees, it is necessary briefly to describe where it occurred and to explain the safety regulation that was violated. Respondent's railroad, having a trackage of 45 miles, crosses the Olympic State highway, a well-paved, moderately busy artery at several points, one of which is called the Axford Prairie crossing (Bd. Exh. 2, R. 85, Bd. Exh. 12, R. 393–401, 178). For about 3 miles before reaching this crossing, respondent's tracks run parallel to the highway, and are separated from it by no more than about 50 feet (R. 242, Bd. Exh. 12). When, as on May 21, the "crummy" is being pushed ahead of the engine, the engineer is seated on the side

[6] The daily work assignments were posted on a call board in the camp office and, though made by Groseclose, the trainmaster, were checked by Ellingson (R. 389–391).

of the engine which affords an unobstructed view of the highway along this 3-mile stretch (R. 188, 241–242, 245–246, Bd. Exh. 12). As the track approaches the Axford Prairie crossing, it turns sharply toward the highway (at an angle of about 60 degrees) before crossing it (R. 246–247, Bd. Exh. 12).

A number of years prior to the dismissal of Lytle and Reece, respondent had orally instructed its brakemen to be at the front end of the "crummy," in sight of the engineer, when their train was approaching a highway crossing, so that they could signal the engineer whether or not to proceed (R. 321–322, 352–353, 369–370).[7] Respondent did not contend that this instruction was in-

[7] The Trial Examiner found that respondent's employees were in disagreement as to whether this instruction had ever been given (R. 28–34); Lytle and Reece testified that they were unaware of the instruction (R. 154–155, 442–443, 450–451). The Board, however, accepted respondent's contention that it had given such an instruction, and found that Lytle and Reece should have known of its existence (R. 65–66).

The Company contended, further, that observance of the safety regulation was required by safety standards which the State of Washington had adopted. An examination of the safety standards discloses, as the Board pointed out, that the regulation was to be observed by the brakeman only if the "crummy" was not "equipped with air" (Resp. Exh. 1, R. 344, 346). Since, however, the undisputed evidence is that an air line ran through the "crummy" on which Lytle and Reece were working (R. 157), this regulation, by its very terms, was not applicable to the instant case. Furthermore, no penalty for any infraction of the safety standards was imposed until the employer had failed to comply with its requirements "for thirty days after having received a written notice from the Department [of Labor and Industries] of the violation (Resp. Exh. 1, R. 347). Plainly, therefore, the employer is given wide latitude regarding the kind of measures

tended to relieve the engineer of the obligation to see that it is safe to proceed before crossing a highway; the engineer is duty-bound under explicit instructions from respondent to warn persons on the highway of the train's approach by blowing the train whistle, and to reduce speed before crossing the highway (R. 181–182, 186–187, 221–223, 233–236, 244, 262–263, 407).

At about 5 a. m. on May 21, Assistant Superintendent Ellingson left respondent's camp in his automobile, and soon caught up with the train on which Lytle and Reece were working (R. 371).[8] He arrived at the Axford Prairie crossing ahead of the train and got out of his automobile for the specific purpose of seeing whether Lytle and Reece would comply with the safety instruction previously mentioned (R. 371–372). He did this at the express direction of one of the Polsons.[9]

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he should adopt to prevent recurrent infractions of the regulations.

These considerations render the present case wholly dissimilar from *The Texas Company* v. *N. L. R. B.*, 120 F. (2d) 186. Unlike the *Texas* case, in which the Court held that the Board did not consider the maritime safety laws in rendering its decision, the Board, in the present case carefully examined the logging safety standards, finding, as has been noted, that they did not apply to the situation before it.

[8] Ellingson testified that he intended to drive to Quinault that morning on business (R. 371, 415).

[9] This finding accords with testimony of Lytle that in discussing the infraction, Ellingson told Lytle he had received that instruction from Polson (R. 152). Neither of the Polsons denied at the hearing that he had given that instruction to Ellingson. The latter testified, however, that he had not set out with the deliberate intention of trailing the train to see whether Lytle and Reece complied with the instruction (R. 415). But, on review-

On the morning of May 21, as stated above, the engineer was seated on the side of the engine nearest the highway (R. 242–243). As the train turned toward the highway on approaching the Axford Prairie crossing, the engineer had a clear view of the highway in the direction from which the train had come; and the fireman had an unobstructed view in the opposite direction (R. 245–247). The day was clear; visibility was good (R. 243, 307). As the train was approaching the Axford Prairie crossing, the engineer and the fireman were both keeping a lookout for traffic on the highway (R. 243). Before crossing the highway, the engineer blew the whistle and reduced the train speed to about 10 miles an hour (R. 240). Lytle and Reece, though inside the "dog house," were also able to look out for danger: Lytle was standing next to the side window nearest the engineer (R. 203, 213, 310–311).[10] Except for Ellingson's standing automobile, there was no vehicle in sight as the train crossed the highway (R. 247–248). The absence of danger and the careful way in which the train was being operated as it crossed the highway were plainly apparent to Ellingson. It is clear from these circumstances, as the Board found (R. 66), that in failing to be outside the "dog house," as the safety rule required, Lytle and Reece "violated

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ing the testimony in the light of Ellngson's behaviour that morning, the Board found that Ellingson "trailed the train to the crossing for the specific purpose of noting whether or not the two brakemen would observe the safety rule in question" (R. 68–69).

[10] Had need arisen, Lytle could easily have signalled the engineer from where he was standing (R. 150–151, 259–260).

the letter, rather than the spirit of the safety regulation in question."

Although Ellingson testified he had set out that morning on a business errand to Quinault (R. 371–372), he did not proceed to Quinault after observing what occurred at the Axford Prairie crossing; instead, he immediately returned to respondent's camp and gave instructions that Lytle and Reece should be laid off (R. 371–372). Ellingson did not undertake at the hearing to explain why he had to abandon his business errand. Respondent did not attempt to show that the instruction to lay the men off could not have been delayed while Ellingson completed his trip to Quinault. The behavior of Ellingson in returning immediately to camp casts doubt on whether he ever intended to go to Quinault that morning and lends credence to the direct testimony in support of the Board's finding that he followed the train for the deliberate purpose of noting whether Lytle and Reece would comply with the safety instruction (*supra,* p. 12, note 9).

At the end of the day, when Lytle and Reece went to get their work assignments for the next day, the trainmaster told them they were being laid off, and that they could not return to work until they had first talked with Ellingson (R. 146–148, 281–284, 291–293).

On Saturday, May 25, Ellingson told Lytle that he and Reece had been laid off because of their failure to flag the Axford Prairie crossing (R. 149–152). Lytle protested that the crossing had never been flagged, whereupon Ellingson said that he referred to their failure to be at the front end of the "crummy" (R. 150–

151). Lytle then asked Ellingson whether Reece and he were being discharged; Ellingson replied that he would let them know on Monday, adding that he was "taking orders" from "Mr." Polson (R. 151–152). Despite Ellingson's promise, however, the men were not informed of their discharge until several weeks later, when they received formal discharge notices (Bd. Exhs. 5, 6, R. 109–110, 131–133, 152, 294–295).

The explanation given by respondent at the hearing for keeping the men in ignorance of their discharge for 3 weeks was the patently specious assertion that it desired to conduct an "investigation" before releasing them (R. 110–114). That would, indeed, have been the natural course for respondent to pursue, had it really desired to mete out discipline to the men in proportion to their dereliction; especially since, as Ellingson knew, the infraction was their first offense and had occurred under circumstances that precluded any possibility of danger. But respondent's officials made no investigation whatever; they questioned neither the men themselves nor the engineer about the infraction (R. 113).

Considering the circumstances under which the infraction occurred, the length of service of the employees, and their previously satisfactory record, it was reasonable for the Board to find, as it did (R. 66–69), that, absent resentment of their leadership in the Brotherhoods, the infraction of the safety rule by Lytle and Reece would have been condoned by respondent or, at most, passed off with a reprimand or mild penalty.

In summary, there was cogent evidence (1) that respondent was strongly opposed to representation

of its railway workers by the Brotherhoods (*supra*, pp. 5–7, 8–9; (2) Lytle and Reece were leaders in the Brotherhoods; (3) their leadership was known to respondent's officials; (4) they were discharged 3 days after respondent acquired that knowledge; (5) respondent's officials went out of their way to discover the infraction to which the discharges were later attributed; (6) the infraction itself, as respondent's officials well knew, was not of a serious nature in the circumstances under which it occurred; (7) the imposition of so drastic a penalty as dismissal, having regard to the long and previously unblemished record of these employees, and the fact that it was their first offense, was unusually severe treatment for a dereliction occurring under such circumstances; and (8) the assertion to which respondent resorted at the hearing in attempting to explain why it kept the men in ignorance of their discharge for 3 weeks after the infraction occurred was false—all these circumstances taken together fully warranted the Board in concluding that the infraction was not the real explanation for the discharges, but that respondent seized upon it as a convenient pretext to conceal the discriminatory motive which impelled it to rid itself of these men.

Opposed to the array of circumstances which support the Board's finding of discrimination is the bare fact that the infraction occurred. If in a case such as this the Board were denied the right to determine the real motive for a discharge, once a breach of discipline, or an instance of defective workmanship was shown to have occurred, the Board would be power-

less to prevent wholesale evasion of the Act, for an employer bent on violating the statute is not likely to confess his guilt. In many cases an offending employer will seize upon any infraction of a company rule, any breach of discipline, any shortcoming in an employee's work—however trivial the fault or extenuating the circumstances—as a pretext for getting rid of a union leader towards whom it is hostile. Aware of these considerations the Supreme Court and this Court have repeatedly held that where, as here, substantial evidence supports "either of two inconsistent inferences" [11] as the explanation for a discharge, the Board—and it alone—has the right to determine which inference should be drawn. *N. L. R. B.* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; *N. L. R. B.* v. *Weyerhaeuser Timber Co.*, 132 F. (2d) 234 (C. C. A. 9); *N. L. R. B.* v. *Schaefer-Hitchcock Co.*, 131 F. (2d) 1004 (C. C. A. 9).

Point II

The Board's order is valid

The Board's order is the usual one prescribed in cases involving violations of Section 8 (1) and (3) of the Act. Its propriety is well established. *Phelps-Dodge Corp.* v. *N. L. R. B.*, 313 U. S. 177, 187–189, 197; see also the authorities cited in the preceding paragraph.

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[11] *N. L. R. B.* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105.

Respondent contended before the Board that after the original charges were filed,[12] the Board unjustifiably delayed the issuance of the complaint. On the basis of this assertion, respondent contended that back pay should have been suspended for the period of that delay. This contention is foreclosed by a recent decision of the Supreme Court holding that delay attributable to the administrative agency "does not warrant shifting the burden to the employee" (*Overnight Motor Transportation Co.* v. *Missell,* 316 U. S. 572, 583). Accord: *N. L. R. B.* v. *Electric Vacuum Cleaner Co.,* 315 U. S. 685, 697–698. The reason for this holding is the just principle that as between the offending employer and the victims of his unlawful conduct, the consequences of such delay should be borne by the former.

Moreover, contrary to respondent's assertion, the delay in issuance of the complaint was not unwarranted. The pressure of other cases before the Board during the period in question was extreme and delay in issuing complaints and scheduling hearings was inevitable. Aware of these considerations, the Third Circuit has recently declared: "The matter of time with regard to the issuance of a complaint by an administrative body must necessarily be one of the matters within the discretion of that body" (*Berkshire Knitting Mills* v. *N. L. R. B.*, 121 F. (2d) 235, 237). In short, the Board's delay in issuing the complaint

[12] The original charge was filed on July 8, 1940—about 3 weeks after respondent notified Lytle and Reece of their dismissal, *supra*, p. 15. There was, therefore, no delay whatever on the part of the employees in filing the charge.

was not unwarranted, and respondent, rather than the employees discriminated against, should properly bear the loss, even if the contrary were true.

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that its order is valid, and that a decree should issue enforcing the Board's order in full.

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APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., 1940 ed., Sec. 151, *et seq.*), are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

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